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COMPLIANCE RULING

In the matter of the Department of Corrections
Ruling Number 2019-4905
April 10, 2019

The Department of Corrections (the “agency”) has requested a compliance ruling from the Office of Employment Dispute Resolution (“EDR”)¹ at the Department of Human Resource Management in relation to the grievant’s May 18, 2018 grievance. The agency alleges that the grievant has failed to comply with the time limits set forth in the grievance procedure for advancing or concluding his grievance.

FACTS

On or about May 18, 2018, the grievant initiated a grievance with the agency. The agency states that the first step response was sent to the grievant on or about May 25, 2018.² Having received no further response from the grievant indicating whether he wished to advance or conclude the grievance, the agency sent, via U.S. Mail, a notice of noncompliance to him on March 15, 2019.³ In its notice of noncompliance, the agency requested a response from the grievant within five workdays of his receipt of the notice. Since more than five workdays have elapsed since the grievant presumably received notice of his alleged noncompliance and he has not yet advanced or concluded his grievance, the agency seeks a compliance ruling allowing it to administratively close the grievance.

¹ The Office of Equal Employment and Dispute Resolution has separated into two office areas: the Office of Employment Dispute Resolution and the Office of Equity, Diversity, and Inclusion. While full updates have not yet been made to the *Grievance Procedure Manual* to reflect this change, this Office will be referred to as “EDR” in this ruling. EDR’s role with regard to the grievance procedure remains the same.

² The agency has provided a copy of the grievance form indicating a response at the first step, but not a copy of the actual response to the grievance. While the completion of such a response is a necessary step, the lack of a copy of that document at this stage does not impact EDR’s ruling in this case. As discussed below, the grievant has been sent a noncompliance letter, so it follows that if he intends to still pursue this grievance, he has received ample notice of what steps he must complete to do so through correspondence from the agency and this ruling.

³ The mailing of correspondence, properly addressed and stamped, raises a presumption of receipt of the correspondence by the addressee. *E.g.*, *Washington v. Anderson*, 236 Va. 316, 322, 373 S.E.2d 712, 715 (1988).

DISCUSSION

The grievance procedure requires both parties to address procedural noncompliance through a specific process.⁴ That process assures that the parties first communicate with each other about the noncompliance, and resolve any compliance problems voluntarily, without EDR's involvement. Specifically, the party claiming noncompliance must notify the other party in writing and allow five workdays for the opposing party to correct any noncompliance.⁵ If the opposing party fails to correct the noncompliance within this five-day period, the party claiming noncompliance may seek a compliance ruling from EDR, who may in turn order the party to correct the noncompliance or, in cases of substantial noncompliance, render a decision against the noncomplying party on any qualifiable issue. When an EDR ruling finds that either party to a grievance is in noncompliance, the ruling will (i) order the noncomplying party to correct its noncompliance within a specified time period, and (ii) provide that if the noncompliance is not timely corrected, a decision in favor of the other party will be rendered on any qualifiable issue, unless the noncomplying party can show just cause for the delay in conforming to EDR's order.⁶

In this case, the grievant appears to have failed to advance or conclude his grievance within five workdays of receiving the agency's first resolution step response, as required by the grievance procedure.⁷ Moreover, the agency notified the grievant of his noncompliance and he has not advanced or concluded his grievance.

As the grievant has apparently failed to advance or conclude his grievance in a timely manner, he has failed to comply with the grievance procedure. EDR therefore orders the grievant to correct his noncompliance **within ten workdays of the date of this ruling** by notifying his human resources office in writing that he wishes either to conclude the grievance or advance to the second step. If he does not, the agency may administratively close the grievance without any further action on its part. The grievance may be reopened only upon a timely showing by the grievant of just cause for the delay (for example, a serious illness, or other circumstances beyond the grievant's control).

EDR's rulings on matters of compliance are final and nonappealable.⁸



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⁴ *Grievance Procedure Manual* § 6.3.

⁵ *See id.*

⁶ While in cases of substantial noncompliance with procedural rules the grievance statutes grant EDR the authority to render a decision on a qualifiable issue against a noncompliant party, EDR favors having grievances decided on the merits rather than procedural violations. Thus, EDR will *typically* order noncompliance corrected before rendering a decision against a noncompliant party. However, where a party's noncompliance appears driven by bad faith or a gross disregard of the grievance procedure, EDR will exercise its authority to rule against the party without first ordering the noncompliance to be corrected.

⁷ *See Grievance Procedure Manual* § 3.1.

⁸ *See* Va. Code §§ 2.2-1202.1(5), 2.2-3003(G).